Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-14335 January 28, 1920

MANUEL DE GUIA, plaintiff-appellant,
vs.
THE MANILA ELECTRIC RAILROAD & LIGHT COMPANY, defendant-appellant.

Sumulong and Estrada, Crossfield and O'Brien and Francisco A. Delgado for plaintiff-appellant.
Lawrence and Ross for defendant-appellant.

STREET, *J.:*

This is an appeal prosecuted both by the plaintiff and the defendant from a judgment of the Court of First Instance of the City of Manila, whereby the plaintiff was awarded the sum of P6,100, with interest and costs, as damages incurred by him in consequence of physical injuries sustained while riding on one of the defendant's car.

The accident which gave rise to the litigation occurred on September 4, 1915, near the end of the street-car line in Caloocan, Rizal, a northern suburb of the city of Manila. It appears that, at about 8 o'clock p.m., of the date mentioned, the plaintiff Manuel de Guia, a physician residing in Caloocan, boarded a car at the end of the line with the intention of coming to the city. At about 30 meters from the starting point the car entered a switch, the plaintiff remaining on the back platform holding the handle of the right-hand door. Upon coming out of the switch, the small wheels of the rear truck left the track, ran for a short distance along the macadam filling, which was flush with the rails, and struck a concrete post at the left of the tract. The post was shattered; and as the car stopped the plaintiff was thrown against the door with some violence, receiving bruises and possibly certain internal injuries, the extent of which is a subject of dispute.

The trial court found that the motorman of the derailed car was negligent in having maintained too rapid a speed. This inference appears to be based chiefly upon the results of the shock, involving the shattering of the post and the bending of the kingpost of the car. It is insisted for the defendant company that the derailment was due to the presence of a stone, somewhat larger than a goose egg, which had become accidentally lodged between the rails at the juncture of the switch and which was unobserved by the motorman. In this view the derailment of the car is supposed to be due to *casus fortuitos* and not chargeable to the negligence of the motorman.

Even supposing that the derailment of the car was due to the accidental presence of such a stone as suggested, we do not think that the existence of negligence is disproved. The motorman says that upon approaching the switch he reduced the electrical energy to the point that the car barely entered the switch under its own momentum, and this operation was repeated as he passed out. Upon getting again on the straight tract he put the control successively at points one, two, three and lastly at point four. At the moment when the control was placed at point four he perceived that the rear wheels were derailed and applied the brake; but at the same instant the car struck the post, some 40 meters distant from the exit of the switch. One of the defendant's witnesses stated in court that the rate of a car propelled by electricity with the control at point "four" should be about five or 6 miles per hour. There was some other evidence to the effect that the car was behind schedule time and that it was being driven after leaving the switch, at a higher rate than would ordinarily be indicated by the control at point four. This inference is rendered more tenable by the circumstance that the car was practically empty. On the whole, we are of the opinion that the finding of negligence in the operation of the car must be sustained, as not being clearly contrary to the evidence; not so much because of excessive speed as because of the distance which the car was allowed to run with the front wheels of the rear truck derailed. It seems to us than an experienced and attentive motorman should have discovered that something was wrong and would have stopped before he had driven the car over the entire distance from the point where the wheels left the track to the place where the post was struck.

The conclusion being accepted that there was negligence on the part of the motorman in driving the car, it results that the company is liable for the damage resulting to the plaintiff as a consequence of that negligence. The

plaintiff had boarded the car as a passenger for the city of Manila and the company undertook to convey him for hire. The relation between the parties was, therefore, of a contractual nature, and the duty of the carrier is to be determined with reference to the principles of contract law, that is, the company was bound to convey and deliver the plaintiff safely and securely with reference to the degree of care which, under the circumstances, is required by law and custom applicable to the case (art. 1258, Civil Code). Upon failure to comply with that obligation the company incurred the liability defined in articles 1103-1107 of the Civil Code. (Cangco *vs.* Manila Railroad Company, 38 Phil. Rep., 768; Manila Railroad Company *vs.* Compañia Transatlantica, and Atlantic, Gulf & Pacific Co., 38 Phil. Rep., 875.)

From the nature of the liability thus incurred, it is clear that the defendant company can not avail itself of the last paragraph of article 1903 of the Civil Code, since that provision has reference to liability incurred by negligence in the absence of contractual relation, that is, to the *culpa aquiliana* of the civil law. It was therefore irrelevant for the defendant company to prove, as it did, that the company had exercised due care in the selection and instruction of the motorman who was in charge of its car and that he was in fact an experienced and reliable servant.

At this point, however, it should be observed that although in case like this the defendant must answer for the consequences of the negligence of its employee, the court has the power to moderate liability according to the circumstances of the case (art. 1103, Civ. Code): Furthermore, we think it obvious that an employer who has in fact displayed due diligence in choosing and instructing his servants is entitled to be considered a debtor in good faith, within the meaning of article 1107 of the same Code. Construing these two provisions together, applying them to the facts of this case, it results that the defendant's liability is limited to such damages as might, at the time of the accident, have been reasonably foreseen as a probable consequence of the physical injuries inflicted upon the plaintiff and which were in fact a necessary result of those injuries. There is nothing novel in this proposition, since both the civil and the common law are agreed upon the point that the damages ordinarily recoverable for the breach of a contractual obligation, against a person who has acted in good faith, are such as can reasonably be foreseen at the time the obligation is contracted. In *Daywalt vs. Corporacion de PP. Agustinos Recoletos* (39 Phil., 587), we said: "The extent of the liability for the breach of a contract must be determined in the light of the situation in existence at the time the contract is made; and the damages ordinarily recoverable are in all events limited to such as might be reasonably foreseen in the light of the facts then known to the contracting parties."

This brings us to consider the amount which may be awarded to the plaintiff as damages. Upon this point the trial judge found that, as a result of the physical and nervous derangement resulting from the accident, Dr. De Guia was unable properly to attend to his professional labors for three months and suspended his practice for that period. It was also proved by the testimony of the plaintiff that his customary income, as a physician, was about P300 per month. The trial judge accordingly allowed P900, as damages for loss of professional earnings. This allowance is attacked upon appeal by the defendant as excessive both as to the period and rate of allowance. Upon examining the evidence we fell disinclined to disturb this part of the judgment, though it must be conceded that the estimate of the trial judge on this point was liberal enough to the plaintiff.

Another item allowed by the trial judge consists of P3,900, which the plaintiff is supposed to have lost by reason of his inability to accept a position as district health officer in Occidental Negros. It appears in this connection that Mr. Alunan, representative from Occidental Negros, had asked Dr. Montinola, who supposedly had the authority to make the appointment, to nominate the plaintiff to such position. The job was supposed to be good for two years, with a salary of P1,600 per annum, and possibility of outside practice worth P350. Accepting these suggestions as true, it is evident that the damages thus incurred are too speculative to be the basis of recovery in a civil action. This element of damages must therefore be eliminated. It goes without saying that damage of this character could not, at the time of the accident, have been foreseen by the delinquent party as a probable consequence of the injury inflicted — a circumstance which makes applicable article 1107 of the Civil Code, as already expounded.

The last element of damages to be considered is the item of the plaintiff's doctor's bills, a subject which we momentarily pass for discussion further on, since the controversy on this point can be more readily understood in connection with the question raised by the plaintiff's appeal.

The plaintiff alleges in the complaint that the damages incurred by him as a result of the injuries in question ascend to the amount of P40,000. Of this amount the sum of P10,000 is supposed to represent the cost of medical treatment and other expenses incident to the plaintiff's cure, while the remainder (P30,000) represents the damage resulting from the character of his injuries, which are supposedly such as to incapacitate him for the exercise of the medical profession in the future. In support of these claims the plaintiff introduced evidence, consisting of his own testimony and that of numerous medical experts, tending to show that as a result of the injuries in question he had developed infarct of the liver and traumatic neurosis, accompanied by nervousness, vertigo, and other disturbing symptoms of a serious and permanent character, it being claimed that these manifestations of disorder rendered him liable to a host of other dangerous diseases, such as pleuresy, tuberculosis, pneumonia, and pulmonary gangrene, and that restoration to health could only be accomplished, if at all, after long years of complete repose. The trial judge did not take these pretensions very seriously, and, as already stated, limited the damages to the three items of professional earnings, expenses of medical treatment,

and the loss of the appointment as medical treatment, and the loss of the appointment as medical inspector in Occidental Negros. As the appeal of the plaintiff opens the whole case upon the question of damages, it is desirable to present a somewhat fuller statement than that already given with respect to extent and character of the injuries in question.

The plaintiff testified that, at the time the car struck against the concrete post, he was standing on the rear platform, grasping the handle of the right-hand door. The shock of the impact threw him forward, and the left part of his chest struck against the door causing him to fall. In falling, the plaintiff says, his head struck one of the seats and he became unconscious. He was presently taken to his home which was only a short distance away, where he was seen at about 10 o'clock p. m., by a physician in the employment of the defendant company. This physician says that the plaintiff was then walking about and apparently suffering somewhat from bruises on his chest. He said nothing about his head being injured and refused to go to a hospital. Later, during the same night Dr. Carmelo Basa was called in to see the plaintiff. This physician says that he found Doctor De Guia lying in bed and complaining of a severe pain in the side. During the visit of Doctor Basa the plaintiff several times spit up blood, a manifestation no doubt due to the effects of the bruises received in his side. The next day Doctor De Guia went into Manila to consult another physician, Doctor Miciano, and during the course of a few weeks he called into consultation other doctors who were introduced as witnesses in his behalf at the trial of this case. According to the testimony of these witnesses, as well as that of the plaintiff himself, the symptoms of physical and nervous derangement in the plaintiff speedily developed in portentous degree.

Other experts were introduced by the defendant whose testimony tended to show that the plaintiff's injuries, considered in their physical effects, were trivial and that the attendant nervous derangement, with its complicated train of ailments, was merely simulated.

Upon this question the opposing medical experts ventilated a considerable mass of professional learning with reference to the nature and effects of the baffling disease known as traumatic neurosis, or traumatic hysteria — a topic which has been the occasion of much controversy in actions of this character in the tribunals of Europe and America. The subject is one of considerable interest from a medico-legal point of view, but we deem it unnecessary in this opinion to enter upon a discussion of its voluminous literature. It is enough to say that in our opinion the plaintiff's case for large damages in respect to his supposed incapacitation for future professional practice is not made out. Of course in this jurisdiction damages can not be assessed in favor of the plaintiff as compensation for the physical or mental pain which he may have endured (Marcelo *vs.* Velasco, 11 Phil. Rep. 287); and the evidence relating to the injuries, both external and internal, received by him must be examined chiefly in its bearing upon his material welfare, that is, in its results upon his earning capacity and the expenses incurred in restoration to the usual condition of health.

The evidence before us shows that immediately after the accident in question Doctor De Guia, sensing in the situation a possibility of profit, devoted himself with great assiduity to the promotion of this litigation; and with the aid of his own professional knowledge, supplemented by suggestions obtained from his professional friends and associates, he enveloped himself more or less unconsciously in an atmosphere of delusion which rendered him incapable of appreciating at their true value the symptoms of disorder which he developed. The trial court was in our opinion fully justified in rejecting the exaggerated estimate of damages thus created.

We now pass to the consideration of the amount allowed to the plaintiff by the trial judge as the expense incurred for medical service. In this connection Doctor Montes testified that he was first called to see the plaintiff upon September 14, 1915, when he found him suffering from traumatic neurosis. Three months later he was called upon to treat the same patient for an acute catarrhal condition, involving disturbance in the pulmonary region. The treatment for this malady was successful after two months, but at the end of six months the same trouble recurred and required further treatment. In October of the year 1916, or more than a year after the accident in question occurred, Doctor Montes was called in consultation with Doctor Guerrero to make an examination of the plaintiff. Doctor Montes says that his charges altogether for services rendered to the plaintiff amount to P350, of which the sum of P200 had been paid by the plaintiff upon bills rendered from time to time. This physician speaks in the most general terms with respect to the times and extent of the services rendered; and it is by no means clear that those services which were rendered many months, or year, after the accident had in fact any necessary or legitimate relation to the injuries received by the plaintiff. In view of the vagueness and uncertainty of the testimony relating to Doctor Montes' services, we are of the opinion that the sum of P200, or the amount actually paid to him by the plaintiff, represents the extent of the plaintiff's obligation with respect to treatment for said injuries.

With regard to the obligation supposedly incurred by the plaintiff to three other physicians, we are of the opinion that they are not a proper subject of recovery in this action; and this for more than one reason. In the first place, it does not appear that said physicians have in fact made charges for those services with the intention of imposing obligations on the plaintiff to pay for them. On the contrary it would seem that said services were gratuitously rendered out of courtesy to the plaintiff as a member of the medical profession. The suggestions made on the stand by these physicians to the effect that their services were worth the amounts stated by them are not sufficient to proved that the plaintiff had incurred the obligation to pay those amounts. In the second place, we are

convinced that in employing so many physicians the plaintiff must have had in view of the successful promotion of the issue of this lawsuit rather than the *bona fide* purpose of effecting the cure of his injuries. In order to constitute a proper element of recovery in an action of this character, the medical service for which reimbursement is claimed should not only be such as to have created a legal obligation upon the plaintiff but such as was reasonably necessary in view of his actual condition. It can not be permitted that a litigant should retain an unusual and unnecessary number of professional experts with a view to the successful promotion of a lawsuit and expect to recover against his adversary the entire expense thus incurred. His claim for medical services must be limited to such expenditures as were reasonably suited to the case.

The second error assigned in the brief of the defendant company presents a question of practice which, though not vital to the solution of this case, is of sufficient general importance to merit notice. It appears that four of the physicians examined as witnesses for the plaintiff had made written statements at various dates certifying the results of their respective examinations into the condition of the plaintiff. When these witnesses were examined in court the identified their respective signatures to these certificates and the trial judge, over the defendant's objection, admitted the documents as primary evidence in the case. This was undoubtedly erroneous. A document of this character is not primary evidence in any sense, since it is fundamentally of a hearsay nature; and the only legitimate use to which one of these certificates could be put, as evidence for the plaintiff, was to allow the physician who issued it to refer thereto to refresh his memory upon details which he might have forgotten. In *Zwangizer vs. Newman* (83 N. Y. Supp., 1071) which was also an action to recover damages for personal injury, it appeared that a physician, who had been sent by one of the parties to examine the plaintiff, had made at the time a written memorandum of the results of the examination; and it was proposed to introduce this document in evidence at the trial. It was excluded by the trial judge, and it was held upon appeal that this was proper. Said the court: "There was no failure or exhaustion of the memory, and no impeachment of the memorandum on cross-examination; and the document was clearly incompetent as evidence in chief."

It results from the foregoing that the judgment appealed from must be modified by reducing the amount of the recovery to eleven hundred pesos (1,100), with legal interest from November 8, 1916. As thus modified the judgment is affirmed, without any special pronouncement as to costs of this instance. So ordered.

Arellano, C.J., Torres, Araullo, Malcolm and Avanceña, JJ., concur.

BACK TOP